In the

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-995

J. CLEM DREWETT, ET AL.,

Appellants,

v.

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

MOTION TO DISMISS

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Appellee with respect moves the Court to dismiss the appeal herein on the following grounds:

I. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THE APPEAL

a. Statement of the Case

The old Property Tax Relief Fund of Louisiana was challenged in the suit styled *Levy v. Parker*, 346 F. Supp. 897, (1972), affirmed 411 U.S. 978, 93 S. Ct. 2266, 36 L.Ed. 2d 955, on the grounds that the system used to reimburse for homestead exemption losses denied equal protection of the law to certain parishes. The *Levy* decision held that since the disbursement of Property Tax Relief Fund monies depended on actual losses claimed by the parishes, there was an arbitrary inequality and discrimination in the use of the fund. The court held that

the combination of unequal assessments, limited taxing power and payments from the fund on the basis of local millage rates resulted in an overall system which breached the constitutional rights of the plaintiffs.

Article X, Section 4 of the Constitution of 1921 was amended to eliminate the Property Tax Relief Fund provisions and Section 10(B) was added to Article X to distribute money for homestead exemption losses based on a set formula using the number of homesteads in and the population of the particular parishes involved. (App. A)

It is the contention of Appellant that although the three state courts of Louisiana have held, without the dissent of a single judge, that the present system which is now found in the Louisiana Constitution of 1974 at Article VII, Section 26 (App. B), is based on a rational formula not subject to local manipulation as required by the *Levy* decision, there is some denial of equal protection of the law.

Appellees contend that this claim is frivolous and does not constitute a substantial federal question as demonstrated below.

b. The Non-Uniformity of Assessment Practices Argument

On page 6 of the Appellants' Jurisdictional Statement the contention is made that the important federal question presented in this case is whether a state may continue to deny equal protection of the law by using the present revenue sharing system. Appellants contend that the present system still is in violation of the *Levy*

case cited above based on the assertion that local assessment practices are not uniform and thus there is still manipulation on the local level of the receipts from the revenue sharing fund.

I would draw this Court's attention to the fact that Article VII, Section 18 (App. C) of the Louisiana Constitution of 1974 will become effective on January 1, 1978. This section mandates a uniform system of property assessments and sets forth in detail the classifications of property and the percentage of assessment attributible to each. Thus, any argument based on the non-uniformity of assessment practices is moot on January 1, 1978. The "important federal question" as asserted by Appellants is actually a frivolous one.

Furthermore, I would refer the Court to the case of *Bussie v. Long*, 383 F. 2d 766 (1967) in which the court held that an action based on non-equalization of assessments did not state a cause of action for deprivation of civil rights.

c. Prohibited Manipulations Argument

Appellants contend that bona fide legislative appropriations to political subdivisions are "prohibited manipulations" and thus prohibited by *Levy*. Clearly the prohibited activity defined in *Levy* is one on the local level resulting in discrimination among parishes in receipt of Property Tax Relief Fund monies. *Levy* does not address itself to the right of the Legislature to appropriate supplemental monies to any given parish it chooses. Clearly it is within the sovereign power of the State Legislature to appropriate monies to given parishes as

long as the constitutional mandate of the revenue sharing fund using the rational formula set down in the Constitution as so declared by the State Courts is followed. Such supplementary appropriations are not related to the revenue sharing formula and are not violative of the *Levy* decision.

d. Cutoff Date Discrimination Argument

Appellants state that the definition of a "tax recipient body" in Act 719 of 1975 of the Louisiana Legislature is discriminatory and shows favoritism as denounced by *Levy*. However, it is clear that it is within the prerogative of the Legislature, as stated above, to provide details of a distribution program as long as the rational formula set forth in the Constitution is adhered to. In fact, the *Levy* court fully contemplated that not all parishes would receive the equal amount of funds even should a rational formula be arrived at.

e. Impairment of Taxation Through Tax Exemption Denies Equal Protection Argument

Clearly the argument of Appellants that the tax burden is shifted by raising the amount of the homestead exemption is not a substantial federal question. It is within the prerogative of the state to reach policy decisions regarding the taxation of its citizens. The case of *Allied Stores of Ohio, Inc. v. Stanley J. Bowers, Tax Commissioner of Ohio*, 358 U.S. 522, 79 S. Ct. 437, as cited by Appellant, stands for the proposition that if the state proceeds on a rational basis to provide laws for taxation, then the equal protection clause is not violated. Clearly there is a rational formula used for the state

revenue sharing system and thus the equal protection clause is not violated. The case of *Dane v. Jackson, Treasurer, etc.*, 256 U.S. 589, 41 S. Ct. 566, as cited by Appellants also holds that the tax system does not violate the Constitution unless there is a flagrant and a palpable inequality between the burden of taxation imposed and the benefit received by the taxpayers. Clearly there is nothing in the record to show any substantial federal question based on the holding in the *Dane* case.

Appellants make the contention that there is no "reasonable distinction" in classifying a house free from property taxation while classifying an apartment complex not homestead exempted. The most elementary consideration of the homestead exemption is that one's residence should be at least partially exempt from property taxation. This automatically excludes the exemption for apartment complexes owned by individuals that are not their family residences. It is frivolous to contend that persons living in apartments actually pay property taxes through increased rents.

Furthermore, I would refer the Court to the case of *Everson v. Board of Education*, 67 S. Ct. 504, 330 U.S. 1, rehearing denied 67 S. Ct. 962, 330 U.S. 855, wherein it was held that the Supreme Court must not strike down a state statute even though the statute approaches the verge of the constitutional power of the state. In the instant case, *a fortiori*, the revenue sharing system does not begin to approach the verge of the constitutional limits of state power. There is no way a parish may manipulate population and number of homesteads.

f. Contract Clause

Appellants claim that contracts with bondholders are impaired by the present distribution of revenue sharing funds. However, as shown on page 16 of the Jurisdictional Statement filed by Appellants, the Louisiana Court of Appeals for the First Circuit in this case (334 So.2d 443) correctly states that reimbursal for homestead exemptions have never been pledged as security for any bonds and thus do not constitute part of a contract with bondholders. Furthermore, there is no showing of any danger to the ability of municipalities to satisfy present bond obligations. Again Appellees urge this Court that there is no basis to grant jurisdiction on a contract clause argument.

I would refer the court to the case of *Atlantic Coast Line R. Co. v. Phillips*, 67 S. Ct. 1584, 332 U.S. 168 (1947) wherein it is held that the United States Supreme Court is dealing with matters of local policy, like a system of taxation, it should be slow to depart from the judgment of the state court. The *Atlantic Coast Line* case dealt with the contract clause and the determination by a state court as to what constituted part of a particular contract. I would also refer the court to the case of *Smith v. Jennings*, 27 S. Ct. 610, 206 U.S. 276 (1907) regarding the impairment of contract argument and a determination by the state court not questioned by the United States Supreme Court.

Also see *New Orleans Taxpayers Protective Association v. Sewerage and Water Board of New Orleans*, 35 S. Ct. 542, 237 U.S. 33, in which it was held that no

substantial federal question was presented by the contention that the obligation of contract between taxpayers in New Orleans under special election statutes was impaired by the requirement that all inhabitants of the city use the public water system.

Further, regarding the equal protection-due process arguments made by Appellants, I would refer this Court to the following cases which stand for the proposition that the United States Supreme Court has not believed that a substantial federal question is presented when dealing with local policy regarding taxation and exemptions therefrom. Those cases are *Utley v. City of St. Petersburg, Florida*, 54 S. Ct. 593, 292 U.S. 106, *Sayward v. Denny*, 15 S. Ct. 777, 158 U.S. 180 (1895); *McDonald v. Oregon, etc.*, 34 S. Ct. 772, 233 U.S. 665; *Los Angeles Farming, etc. Co. v. Los Angeles, California*, 30 S. Ct. 452, 217 U.S. 217.

II. THE JUDGMENT APPEALED FROM RESTS ON AN ADEQUATE NON-FEDERAL BASIS

The issues involved in this suit are issues of tax policy that the United States Supreme Court has, as shown by the following authority, always left to the sound discretion of the individual state courts. It is the contention of Appellee that the decision rendered by the Louisiana Court Appeals for the First Circuit as affirmed by the Louisiana State Supreme Court was based on an interpretation of strictly state constitutional and statutory law and that therefore according to Rule 16 of the United States Supreme Court this motion to dismiss should be granted.

Supporting this conclusion is the case of *Hammerstein v. Superior Court of California, in and for Los Angeles County, California*, 71 S. Ct. 521, 340 U.S. 622; *Kovacs v. Cooper*, 69 S. Ct. 448, 336 U.S. 77, rehearing denied 69 S. Ct. 638, 336 U.S. 921; and *Fay v. Noia*, 83 S. Ct. 822, 372 U.S. 391.

The latter case holds that the co-presence of federal grounds for a decision in state court does not automatically result in the United States Supreme Court jurisdiction being invoked since independent and adequate state grounds were also present. The case at bar clearly was decided on independent and adequate state grounds.

III. STATE TAX POLICY SHOULD BE DECIDED BY THE STATE LEGISLATURE AND INTERPRETED BY STATE COURTS

Jurisdiction of Appeals has consistently been denied by this Court in cases that involve a determination of local policy wherein the best forum for determination of that policy is the State Legislature. In matters of taxation, this court has consistently held that the state court should be the forum for determination of matters of interpretation and applicability of state laws. In support of these contentions, I would refer the court to the cases of *Daniel v. Family Sec. Life Ins. Co.*, 69 S. Ct. 550, 336 U.S. 220; *Avery v. State of Alabama*, 60 S. Ct. 321, 308 U.S. 444; *Pacific States Box & Basket Co. v. White*, 56 S. Ct. 159, 296 U.S. 176; *Arizona Employers' Liability Cases*, 39 S. Ct. 553, 250 U.S. 400; *Central Greyhounds Lines of New York v. Mealey*, 68 S. Ct. 1260, 334 U.S. 653; *Clyde v. Gilchrist*, 43 S. Ct. 501, 262 U.S. 94; *Green v. Frazier*, 40 S. Ct. 499, 253 U.S. 233, which held that

there is a clear presumption in favor of the validity of action taken by the constituted authority of any state regarding the taxing power; *American Oil Company v. Neal*, 85 S. Ct. 1130, 380 U.S. 450; and *Labine v. Vincent*, 91 S. Ct. 1017, 401 U.S. 532, which holds that the Federal Constitution did not give to the United States Supreme Court the power to overturn legislation of the state under the guise of constitutional interpretation.

IV. CLAIMS OF APPELLANT ARE FRIVOLOUS

It is the contention of Appellee that the claims of jurisdiction made by Appellants in this suit are frivolous and do not constitute a substantial federal question and thus the following authority dictates that this Court is without jurisdiction. (28 U.S.C.A. 1257(a); *Honeyman v. Hanan*, 57 S. Ct. 350, 300 U.S. 14; *Seaboard Airline Ry. Co. v. Watson*, 53 S. Ct. 32, 287 U.S. 86)

V. THE OVER CROWDED DOCKET

Since there is no substantial question involved in this appeal and for the other reasons cited above, jurisdiction should not be taken in the appeal. The granting of appeal jurisdiction in this case would waste the time, effort and resources of the Court already dealing with an overcrowded docket.

CONCLUSION

This Court should not take jurisdiction of this appeal, and same should be dismissed with all costs assessed against the Appellant. It is so moved.

Respectfully submitted,

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APPENDIX A

Article X of the Louisiana Constitution of 1921:

9(a). **Property tax relief fund.** That notwithstanding any other provisions in the Constitution herein contained, the Legislature may authorize any municipal corporation in this state, after providing for its statutory and fixed charges, to transfer any surplus funds, not otherwise appropriated or pledged, to a special fund to be designated "Property Tax Relief Fund" for the purpose of providing exemption or relief from the payment of parish, or municipal or taxing district taxes, general or special, all or any part thereof, on all homes within the corporate limits of any municipal corporation owned and occupied by every head of a family, or person having a mother or father or person or persons dependent on him or her for support, to the value of Two Thousand ($2,000.00) Dollars, provided that the aggregate amount of such tax exemption or relief shall in no one year exceed the amount of funds in said Property Tax Relief Fund, and also provided further that the municipal corporation shall provide for the reimbursement of the general or special funds of the parish, municipal corporation or taxing district for any sum or sums which may be lost to the parish, municipal corporation or taxing district occasioned by such exemption or relief, which amount or amounts shall be payable out of the funds in the Property Tax Relief Fund of the municipal corporation.

The above was repealed after the *Levy* decision and the following was enacted as part of Article X of the Constitution of 1921:

§ 10B. Revenue Sharing Fund

Section 10B. There is hereby established and created a special fund in the State Treasury to be known as the Revenue Sharing Fund. The Fund shall be composed of monies which shall be transferred to it annually out of the state general fund by the state treasurer in the amount of Eighty Million and no/100 ($80,000,000.00) Dollars. This provision shall be self-operative. The legislature may allocate additional sums to the Revenue Sharing Fund and shall provide for distribution of the monies in the Fund to those local governing bodies, municipalities, police juries, boards, commissions, districts and other agencies as may be designated by it.
(Added by Acts 1972, Ex.Sess., No. 18, adopted Nov. 7, 1972.)

APPENDIX B

Louisiana Constitution of 1974, Article VII:

Section 26. Revenue Sharing Fund

Section 26. (A) Creation of Fund. The Revenue Sharing Fund is created as a special fund in the state treasury.

(B) Annual Allocation. The sum of ninety million dollars is allocated annually from the state general fund to the revenue sharing fund. The legislature may appropriate additional sums to the fund.

(C) Distribution Formula. The revenue sharing fund shall be distributed annually as provided by law solely on the basis of population and number of homesteads in each parish in proportion to population and the number of homesteads throughout the state. Unless

otherwise provided by law, population statistics of the last federal decennial census shall be utilized for this purpose. After deductions in each parish for retirement systems and commissions as authorized by law, the remaining funds, to the extent available, shall be distributed by first priority to the tax recipient bodies within the parish, as defined by law, to offset current losses because of homestead exemptions granted in this Article. Any balance remaining in a parish distribution shall be allocated to the municipalities and tax recipient bodies within each parish as provided by law.

(D) Distributing Officer. The funds distributed to each parish as provided in Paragraph (C) shall be distributed in Orleans Parish by the city treasurer of New Orleans and in all other parishes by the parish tax collector. The funds allocated to the Monroe City School Board or its successor shall be distributed to and by the city treasurer of Monroe.

(E) Bonded Debt. A political subdivision, as defined by Article VI of this constitution, may incur debt by issuing negotiable bonds and may pledge for the payment of all or part of the principal and interest of such bonds the proceeds derived or to be derived from that portion of the funds received by it from the revenue sharing fund, to offset current losses caused by homestead exemptions granted by this Article. Unless otherwise provided by law, no moneys allocated within any parish from the balance remaining in its distribution may be pledged to the payment of the principal or interest of any bonds. Bonds issued under this Paragraph shall be issued and sold as provided by law, and shall require

approval of the State Bond Commission or its successor prior to issuance and sale.

APPENDIX C

Louisiana Constitution of 1974, Article VII:

Section 18. Ad Valorem Taxes

Section 18. (A) Assessments. Property subject to ad valorem taxation shall be listed on the assessment rolls at its assessed valuation, which, except as provided in Paragraph (C), shall be a percentage of its fair market value. The percentage of fair market value shall be uniform throughout the state upon the same class of property.

(B) Classification. The classifications of property subject to ad valorem taxation and the percentage of fair market value applicable to each classification for the purpose of determining assessed valuation are as follows:

Classifications	Percentages
1. Land	10%
2. Improvements for residential purposes	10%
3. Other property	15%

(C) Use Value. Bona fide agricultural, horticultural, marsh, and timber lands, as defined by general law, shall be assessed for tax purposes at ten percent of use value rather than fair market value. The legislature may provide by law similarly for buildings of historic architectural importance.

(D) Valuation. Each assessor shall determine the fair market value of all peroperty subject to taxation

within his respective parish or district except public service properties, which shall be valued at fair market value by the Louisiana Tax Commission or its successor. Each assessor shall determine the use value of property which is to be so assessed under the provisions of Paragraph (C). Fair market value and use value of property shall be determined in accordance with criteria which shall be established by law and which shall apply uniformly throughout the state.

(E) Review. The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.

(F) Reappraisal. All property subject to taxation shall be reappraised and valued in accordance with this Section, at intervals of not more than four years.

CERTIFICATE

This is to certify that pursuant to Rule 33 of this Court, copies of the foregoing Motion to Dismiss have been mailed, postage prepaid, to the following: Frank Salter, Jr., District Attorney, Courthouse Building, Parish of Calcasieu, Lake Charles, Louisiana, 70601; Joseph W. Greenwald, Assistant District Attorney, Parish of Calcasieu, Courthouse Building, Lake Charles, Louisiana, 70601; Robert M. McHale, Attorney for Lake Charles Harbor and Terminal District, P. O. Box 1591, Lake Charles, Louisiana, 70601; Louis Bufkin, Attorney for Charles Molbert, Intervenor-Bondholder, P. O. Box 1591, Lake Charles, Louisiana, 70601; Peter Ciambotti, City Attorney, City Hall, Lake Charles, Louisiana, 70601; and Fred G. Benton, Jr., Benton, Benton & Benton, Attorneys at Law, 601 St. Ferdinand Street, Baton Rouge, Louisiana, 70802.

Baton Rouge, Louisiana, February ____, 1977.

FRED L. CHEVALIER

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